

AN ACT

relating to names of domestic and foreign filing entities for transacting business in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (21-a) and amending Subdivision (23) to read as follows:

(21-a) "Fictitious name" means an assumed name:

(A) that a foreign filing entity adopts for use because the name of the entity as stated in the entity's certificate of formation or similar organizational instrument is not available for use under the laws of this state; and

(B) under which the foreign filing entity is registered to transact business in this state, in accordance with Chapter 9.

(23) "Filing instrument" means an instrument, document, consent, or statement that is required or authorized by this code to be filed by or for an entity with the filing officer in accordance with Chapter 4.

SECTION 2. Subchapter A, Chapter 5, Business Organizations Code, is amended by adding Section 5.002 to read as follows:

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Notwithstanding Sections 5.053, 5.102, and 5.153, the secretary of state may accept a name if the entity or

1 person seeking acceptance of the filing instrument with the
2 indistinguishable name delivers to the secretary of state a
3 certified copy of the final judgment of a court of competent
4 jurisdiction that establishes the entity's or person's right to the
5 name in this state.

6 SECTION 3. Section 5.053, Business Organizations Code, is
7 amended to read as follows:

8 Sec. 5.053. DISTINGUISHABLE [~~IDENTICAL AND DECEPTIVELY~~
9 ~~SIMILAR~~] NAMES REQUIRED [~~PROHIBITED~~]. (a) The name of a [A] filing
10 entity or the name under which [~~may not have a name, and~~] a foreign
11 filing entity registers [~~may not register~~] to transact business in
12 this state must be distinguishable in the records of the secretary
13 of state from [~~under a name, that is the same as, or that the~~
14 ~~secretary of state determines to be deceptively similar or similar~~
15 ~~to~~]:

- 16 (1) the name of another existing filing entity;
- 17 (2) the name of a foreign filing entity that is
18 registered under Chapter 9;
- 19 (3) the fictitious name under which a foreign filing
20 entity is registered to transact business in this state;
- 21 (4) a name that is reserved under Subchapter C; or
- 22 (5) [~~(4)~~] a name that is registered under Subchapter

23 D.

24 (b) Subsection (a) does not apply if the other entity or the
25 person for whom the name is reserved or registered, as appropriate,
26 provides to the secretary of state a notarized written statement of
27 the entity's or person's consent to the use of the [~~similar~~] name.

1 (c) Subsection (b) does not apply if the secretary of state
2 determines that the names are the same.

3 SECTION 4. Section 5.102, Business Organizations Code, is
4 amended to read as follows:

5 Sec. 5.102. LIMITATION ON THE RESERVATION OF CERTAIN NAMES
6 [~~PROHIBITED; EXCEPTIONS~~]. (a) The secretary of state may [~~not~~]
7 reserve a name under this subchapter only if the name [that] is
8 distinguishable in the records of the secretary of state from [the
9 ~~same as, or that the secretary of state considers deceptively~~
10 ~~similar or similar to]~~:

- 11 (1) the name of an existing filing entity;
- 12 (2) the name of a foreign filing entity that is
13 registered under Chapter 9;
- 14 (3) the fictitious name under which a foreign filing
15 entity is registered to transact business in this state;
- 16 (4) a name that is reserved under this subchapter; or
- 17 (5) [4] [~~4~~] a name that is registered under Subchapter

18 D.

19 (b) Subsection (a) does not apply if the other entity or the
20 person for whom the name is reserved or registered, as appropriate,
21 provides to the secretary of state a notarized written statement of
22 the entity's or person's consent to the subsequent reservation of
23 the [~~similar~~] name.

24 (c) Subsection (b) does not apply if the secretary of state
25 determines that the names are the same.

26 SECTION 5. Section 5.153, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 5.153. LIMITATION ON THE REGISTRATION OF CERTAIN NAMES
2 ~~[REGISTRATIONS PROHIBITED; EXCEPTIONS]~~. (a) The secretary of
3 state may ~~[not]~~ register a name under this subchapter only if the
4 name [that] is distinguishable in the records of the secretary of
5 state from [the same as, or that the secretary of state determines
6 ~~to be deceptively similar or similar to]~~:

7 (1) the name of an existing filing entity;

8 (2) the name of a foreign filing entity that is
9 registered under Chapter 9;

10 (3) the fictitious name under which a foreign filing
11 entity is registered to transact business in this state;

12 (4) a name that is reserved under Subchapter C; or

13 (5) ~~(4)~~ a name that is registered under this
14 subchapter.

15 (b) Subsection (a) does not apply if:

16 (1) the other entity or the person for whom the name is
17 reserved or registered, as appropriate, provides to the secretary
18 of state a notarized written statement of the entity's or person's
19 consent to the registration of the ~~[similar]~~ name; or

20 (2) the applicant is a bank, trust company, savings
21 association, or insurance company that has been in continuous
22 existence from a date that precedes the date the indistinguishable
23 ~~[conflicting]~~ name is filed with the secretary of state.

24 (c) Subsection (b) does not apply if the secretary of state
25 determines that the names are the same.

26 SECTION 6. Section 9.105, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 9.105. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~
2 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state
3 determines that the [~~a foreign filing entity's~~] name of a foreign
4 filing entity or the fictitious name under which it is registered to
5 transact business in this state does not comply with Chapter 5 [~~is~~
6 ~~the same as, deceptively similar to, or similar to a name of a~~
7 ~~filing entity or foreign filing entity as provided by or reserved or~~
8 ~~registered under this code~~], the secretary of state may not accept
9 for filing the certificate of reinstatement unless the foreign
10 filing entity contemporaneously amends its registration to change
11 its name to a name that complies with Chapter 5, or provides a
12 fictitious name under which the foreign filing entity will transact
13 business in this state that complies with Chapter 5 [~~obtains~~
14 ~~consent for the use of the similar name~~].

15 SECTION 7. Section 11.203, Business Organizations Code, is
16 amended to read as follows:

17 Sec. 11.203. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~
18 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state
19 determines that a filing entity's name contained in a certificate
20 of reinstatement filed under Section 11.202 does not comply with
21 Chapter 5 [~~is the same as, deceptively similar to, or similar to a~~
22 ~~name of a filing entity or foreign entity on file as provided by or~~
23 ~~reserved or registered under this code~~], the secretary of state may
24 not accept for filing the certificate of reinstatement unless the
25 filing entity contemporaneously amends its certificate of
26 formation to change its name to a name that complies with Chapter 5
27 [~~or obtains consent for the use of the similar name~~].

1 SECTION 8. This Act takes effect June 1, 2018.

President of the Senate

Speaker of the House

I certify that H.B. No. 2856 was passed by the House on May 9, 2017, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2856 was passed by the Senate on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor